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July 21, 2021

VIA ECF

The Honorable Michael A. Shipp, U.S.D.J.
United States District Court
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, NJ 08608

***RE: Amgen, Inc. v. Sandoz Inc., et al.
Civil Action No. 18-11026 (MAS)(DEA) (consolidated)***

Dear Judge Shipp:

We represent Defendant Sandoz Inc. in the above referenced matter. On behalf of Defendants, please accept this letter in response to the July 20, 2021 letter of Amgen, Inc. ("Amgen") proposing an unfair order of closing presentations in which it gets to address the Court both first and last (D.E. 488).

Defendants propose that the Court hear closing arguments in the traditional matter: the Plaintiff presents its closing with respect to the patent in suit, after which the Defendants present theirs, with no rebuttal by either party on any issue. This approach is consistent with the manner in which this Court has previously conducted patent infringement trials. In the Sanofi-Aventis U.S. LLC v. Fresenius Kabi USA matter, 14-cv-7869, the Court heard oral argument on a patent-by-patent basis, first hearing closing arguments from Plaintiff's counsel, followed by closing arguments by Defendants' counsel. These are reflected in the Clerk's minute entry for the closing arguments (D.E. 284) and the transcript (D.E. 297).

Amgen's attempt to use the order of trial presentations as a basis for closing presentations is without merit. The order of trial presentations in this case was itself a compromise, borne of a number of issues not pertinent to closings, and one which deviated from the legally correct order of presentation in trials such as this. In a trial of patent validity, the defendant bears the burden of proof, which entitles the defendant to present first and last with regard to that issue. Novartis Pharm Corp. v. Teva Pharm. USA, Inc., Civil Action No. 05-CV-1887 (DMC), 2009 WL 3334850 at *2 (D.N.J. Oct. 14, 2009). While this is Defendants' preference for the closing argument, Defendants are not asking the Court to adopt it for closings. Instead, Defendants have proposed a fair compromise that allows each side to close once, unlike Plaintiff's proposal which will allow it to close twice, while Defendants only get one chance.

We thank the Court for its attention to this matter.

Respectfully submitted,

/s/Eric I. Abraham
ERIC I. ABRAHAM

cc: Counsel of Record via ECF